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Security Council
Fifty-fifth year

Letter dated 2 October 2000 from the Permanent Representative of Ukraine to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the updated information about the national policy and practice of Ukraine regarding export of conventional weapons and related technology (see annex).

I should be grateful if you would have the text of the present letter and its annex circulated as a document of the General Assembly, under agenda item 73 (i), (o), (s) and (w), and of the Security Council.

(*Signed*) Volodymyr **Yel'chenko**
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Annex to the letter dated 2 October 2000 from the Permanent Representative of Ukraine to the United Nations addressed to the Secretary-General

[Original: Russian]

Ukraine

State policy and/or national practice and procedures regarding export of conventional weapons and related technologies

1. Basic principles, policy and/or national practice regarding export of conventional weapons and related technologies.

Regulation of the export of conventional weapons and related technologies provides for:

- export of conventional weapons and related technologies only by export companies that have received the relevant authorization from the Cabinet of Ministers of Ukraine;
- authorization from the State Export Control Service for said companies to negotiate with foreign companies with a view to signing foreign-trade agreements on international transfers of military goods and also on the export of dual-use goods to countries against which a partial embargo on deliveries of such goods has been imposed;
- authorization from the State Export Control Service of Ukraine to export or re-export conventional arms and related technologies;
- declaration and customs clearance of conventional weapons and related technologies;
- obtaining (issuance of), where necessary, appropriate guarantees from the end-user (importer);
- monitoring of the use of such weapons and technologies by users and, where necessary, conduct of inspections at the sites of the declared use or storage of such weapons and technologies;
- penalties for breach of the established procedure for exporting conventional weapons and technologies.

2. National legislation regulating export of conventional weapons and related technologies. Amendments and/or revisions to legislation, including all auxiliary legislation in that field.

The legal base for export regulations in Ukraine comprise:

(a) Acts:

- on foreign economic activity;
- on entrepreneurship;
- on the defence of Ukraine;

– on the Security Service;

– on operational investigatory activity.

(b) *Presidential decrees:*

– No. 117 of 13 February 1998 on the Statute on State export control in Ukraine;

– No. 1279 of 28 December 1996 on further improvement of State export control;

– No. 423 of 13 May 1997 on the Statute on the procedure for issuing permits for the transfer of information constituting a State secret to another State, and the material carriers of such information;

– No. 121 of 4 February 1999 on questions of military and technical cooperation with foreign states, export control and military-industrial policy;

– No. 283 of 26 March 1999 on the introduction of amendments and additions to presidential decree No. 1279 of 28 December 1996 and No. 117 of 13 February 1998;

– No. 422 of 21 April 1999 on measures to improve military and technical cooperation of Ukraine with foreign States;

– No. 861 of 15 July 1999 on the procedure for establishing (withdrawing) restrictions on the export of goods in accordance with Ukraine's international obligations;

– No. 868 of 8 July 2000 on measures to enhance the effectiveness of military and technical cooperation between Ukraine and foreign States.

(c) *Decisions of the Cabinet of Ministers:*

– No. 651 of 12 April 2000 on the Statute on the State Export Control Service;

– No. 1358 of 8 December 1997 on the Statute on the procedure for State monitoring of international transfer of military goods;

– No. 838 of 8 June 1998 on the Statute on the procedure for granting foreign economic agents the right to export and import military goods and goods containing information constituting a State secret;

– No. 125 of 8 February 1998 on the Statute on the procedure for State monitoring of negotiations involving the conclusion of foreign economic agreements (contracts) on international transfers of military goods and dual-use goods;

– No. 920 of 27 May 1999 on the Statute on the procedure for issuing guarantees and for state monitoring of international transfers of military goods and dual-use goods.

3. All international agreements or guiding principles applied in Ukraine — in addition to its obligations in the framework of the Organization for Security and Cooperation in Europe (OSCE) — with respect to export of conventional weapons.

Ukraine is a party to the international regulations with respect to export controls for conventional arms and dual-use goods and technologies — the Wassenaar Arrangement.

Details of international transfers of conventional weapons are submitted to the United Nations on an annual basis in accordance with General Assembly resolution 46/36 and to the secretariats of OSCE and the Wassenaar Arrangement, within established time limits and according to the agreed schedule.

4. Procedure for examining applications for the export of conventional weapons and related technologies:

Who issues the corresponding permits?

What other bodies are involved and what is their role?

The procedure for examining applications for the export of conventional weapons and related technologies was established by decision 767 of the Cabinet of Ministers of Ukraine of 15 July 1997 entitled "Approval of the Statute on the procedure for conducting examinations in the area of export control".

In order to obtain an export permit, a Ukrainian exporter must send the State Export Control Service an application that follows the established model and attach the following documents:

- a certificate of registration and the document confirming the right to export military goods in accordance with the declared schedule;
- a notarized copy of the foreign-trade agreement (contract) on the export of the goods indicated in the application;
- technical data on the purpose and possible use of the goods;
- the original copies of the documents containing guarantees from the importer and end-user of the goods.

The decision to grant or refuse a permit to export goods is taken by the State Export Control Service following its consideration of the conclusions of an interdepartmental examination. Problems relating to the granting of permits are referred to the Committee on Export Control Policy and Military and Technical Cooperation of the Office of the President of Ukraine (hereinafter the Committee).

The State Export Control Service invites subdivisions of ministries and departments to participate in the examination of exporters' applications for the export of conventional weapons and dual-use goods and technologies.

5. Schedules of conventional weapons the export of which is subject to national monitoring, and the basis for such monitoring. Amendments and clarifications.

Lists of conventional weapons and related technologies were established by decision 1358 of the Cabinet of Ministers of Ukraine of 8 December 1997 entitled

"Approval of the Statute on the procedure for State monitoring of international transfer of military goods".

6. **Principles and national rules concerning the recipients or end-users of exported technology. The existence or otherwise of a comprehensive schedule concerning:**

- recipients, deliveries to whom require caution;
- countries, deliveries to which are prohibited;
- distinctions drawn between recipients (for example, whether particular countries (or a group of countries) are accorded a more favourable regime).

At the present time, Ukraine does not have a published schedule of places of destination that are a matter of concern.

In granting permits for the export of conventional weapons and related technologies, Ukraine pursues an appropriate national policy and, in particular, imposes a full (or partial) embargo with respect to countries indicated in Security Council resolutions, recommendations of the General Assembly and decisions of OSCE. In addition, Ukraine fulfils its commitments as a party to the international regulations with respect to export controls.

In examining exporters' applications, Ukraine's export control bodies make use of lists of firms (companies) known throughout the world as violators of the international principles governing the transfer of conventional weapons and dual-use goods.

7. **Do end-user certificates have to be submitted when applying for an export licence, or do contracts for the export of conventional weapons have to include clauses prohibiting their re-exportation, or is some other form of certification required before and after delivery in connection with such contracts? If so, how is the verification made — before and after delivery with respect to the end-user certificate and/or the clauses prohibiting re-exportation?**

The procedure for obtaining guarantees relating to the end-user of the goods and the place where the goods are to be used provides that the exporter must obtain from the importer:

- reliable information on the end-user, intended use and place of use of the goods specified in the agreement (contract);
- an undertaking to import the goods only into the country specified;
- an undertaking not to re-export the goods to third countries without the prior consent of the exporter and the export-control authorities of Ukraine and the user country.

The requisite undertakings and guarantees by the importer to the exporter may be submitted in the form of an import certificate, an end-user certificate and/or other documents that contain them.

The procedure for drawing up such documents is established by the legislation of the user country.

The authenticity of the documents is verified by the State Export Control Service, the Ministry of Foreign Affairs, the Security Service of Ukraine and other

authorized bodies both during the stage at which the exporters' application is examined and when the goods are transferred. An end-user certificate and an import certificate need not be submitted in cases where special bought-in weapons components and military and special technology for the development, production, utilization and repair of military hardware are exported by Ukrainian industrial enterprises in compliance with international treaties (or agreements) relating to industrial and technological cooperation by industrial defence enterprises with enterprises of the Commonwealth of Independent States.

8. **The national definition of the concepts of the transit and trans-shipment of cargoes (including free zones) as applied to conventional weapons, and the related national legislation and procedures for ensuring compliance.**

Transit is the carriage of goods subject to control through the territory of Ukraine without any use being made of them in that territory.

For the transit of goods through Ukrainian territory, the subject of foreign economic activity or the foreign subject of economic activity must obtain the approval of the State Export Control Service.

9. **Procedures implemented with respect to companies that export arms. Are such companies required to obtain official permission from government bodies to negotiate or conclude or sign contracts with foreign clients?**

The set of measures concerning State monitoring of negotiations between export companies and foreign companies in relation to the conclusion of foreign economic contracts on international transfers of military goods and also on the export of dual-use goods to countries against which a partial embargo on deliveries of such goods has been imposed was adopted by decision No. 125 of 4 February 1998 of the Cabinet of Ministers of Ukraine, entitled "Statute on the procedure for State monitoring of negotiations involving the conclusion of foreign economic agreements (contracts) on international transfers of military goods and dual-use goods".

10. **Policy on the cancellation of previously issued export licences; list of all rules issued in this regard.**

When an entrepreneur loses his right to engage in foreign-trade transactions involving military goods, the permits issued to him by the State Export Control Service are cancelled by the Cabinet of Ministers of Ukraine.

In the event of a reorganization or change in the name of a juridical person, the entrepreneur is obliged to apply within 15 days for a new permit.

If a Ukrainian or foreign entrepreneur violates the conditions or rules governing the international transfer of military goods indicated in the permit, or if circumstances arise that may be harmful to Ukraine's national security interests or contravene its obligations under international agreements, the State Export Control Service may temporarily suspend or cancel a permit.

Decisions by the State Export Control Service to refuse, suspend or cancel permits are taken in consultation with the Committee. Entrepreneurs may appeal against such decisions in the manner prescribed in the relevant legislation.

The procedures for the cancellation of permits are set forth in the decisions of the Cabinet of Ministers of Ukraine listed in point 2 above.

11. Judicial and administrative sanctions against exporters who violate the national control regime. Changes in and/or elaborations on the reports submitted in 1997.

Ukrainian legislation makes it possible to combat violations in the area of international transfers of controlled goods and to impose criminal, administrative, civil or financial penalties on the guilty parties.

The Ukrainian acts on the Security Service of Ukraine (art. 2) and on operational investigatory activity (art. 1), of 5 April 1992 and 18 February 1992, respectively, assign law-enforcement agencies the basic tasks of preventing, identifying, halting and exposing crimes through the investigation and establishment of the facts relating to the illegal activities of individuals or groups.

The Civil Code of Ukraine (arts. 48, 49 and 50) establishes rules for determining whether or not an agreement meets the requirements of legislation and sets out the material responsibility for parties to an illegal agreement.

The provisions of the Customs Code of Ukraine (arts. 103, 111, 113 and 114) set out responsibility for violation of customs rules. Such violations are punishable by monetary penalties (fines), confiscation of property, administrative detention of property and confiscation of documents.

A considerable number of infractions in the field of exports of weapons and dual-use goods are covered by the Criminal Code of Ukraine (arts. 221, 221 (1), 222, 228 (2), 228 (4), 228 (5), 228 (6), 229 and 70).

Article 70 of the Criminal Code deserves particular attention, since it classifies radioactive substances excluded from free circulation, weapons, munitions, explosives and similar items as contraband. Article 228 (6) of the Criminal Code prohibits the export from Ukraine of raw materials, materials and equipment for the manufacture of weapons, as well as military and special technology.

To date, the State Export Control Service has established instructions for conducting investigations of violations by foreign companies of export-control rules and procedures, as well as the procedure for verifying Ukrainian companies' compliance with their commitments to use military goods and dual-use goods imported with the provision of State guarantees for their declared purposes.

12. Any circumstances in which no export licence is required for arms exports.

Authorization from the State Export Control Service for arms exports is necessary in all cases, except:

Transfers of goods in connection with activities conducted by the Armed Forces and other military formations of Ukraine outside its territory or by military formations of foreign States in the territory of Ukraine, within the framework of international treaties;

The export, import, transit and temporary import or export of gas guns, sporting and hunting guns and their constituent parts, air-gun cartridges and ammunition for sporting and hunting guns, and the export and import of authorized arms and service arms by military personnel, members of the ranks and officers of

the internal affairs agencies and other persons who, in accordance with the law, have the right to bear arms.

13. Licences for temporary export (for example, for demonstration or testing), authorized periods for such export, and any special conditions for the granting of licences, including procedures for verifying return.

The temporary export of goods for demonstration at exhibitions or fairs, or for publicity, testing or another similar purpose, is permitted subject to approval by the State Export Control Service and provided that such export does not involve a transfer of ownership rights.

In all cases, the maximum period for temporary export may not exceed one year. In issuing temporary-export permits, the State Export Control Service sets the obligatory condition that the property must be returned.

14. Different types of licences (for example, individual, general, restricted, unrestricted, permanent, etc.) and their purpose.

Ukraine issues two types of permits: the State Export Control Service's one-time permit and its general permit.

Only a one-time permit can be used for weapons exports, while both one-time and general permits are issued for the export of dual-use goods.

In contrast to the one-time permit, the general permit allows for the export of a given category of goods to one or several countries, without fixing the volume of the shipment. This type of permit is used, as a rule, for countries of the Commonwealth of Independent States with which Ukraine has concluded treaties on cooperation among enterprises in the defence branches of industry.

Transit of weapons and military technology through the territory of Ukraine is permitted subject to approval by the State Export Control Service.

15. Information transmitted to exporters concerning the possible granting of licences in particular cases, that is concerning the likelihood of receiving a permit for a planned transaction.

The procedure for the completion and submission by exporters of applications for permits from the State Export Control Service, the procedures for their consideration and the criteria for decisions were established by the decisions of the Cabinet of Ministers listed in section 2 of this questionnaire. The cases in which applicants may be refused a permit are also set out in this paragraph.

16. Average number of export licences granted in one year, and number of staff involved in issuing such licences.

In 1998, 1,078 permits were granted for the export of goods subject to export controls, in 1999, 1,311 permits, and, in the first six months of 2000, 770 permits.

The number of staff, including experts, employees preparing permits and members of the software and information technology units, is 48.

17. Any other information relating to the export of conventional weapons and related technologies, particularly supplementary legislation, reports to Parliament and special procedures for different types of goods.

The State Export Control Service prepares quarterly and half-yearly reports addressed to the President and the Prime Minister on the results of the granting of permits, which include quantitative and qualitative analysis of shipments of goods, including those for which permits were granted and those for which permits were refused.

18. Have arrangements been made in the country for the publication of all guidelines and provisions concerning the transfer of conventional weapons?

This information is published in the newspaper *Uryadovy kuryer*, which is the organ of the Ministry of Justice of Ukraine, and is also regularly transmitted by the State Export Control Service to the mass media.